

Court of Appeals, State of Michigan

ORDER

People of MI v Jose Nino

Docket No. 344364

LC No. 17-001718-01-AR

Kathleen Jansen
Presiding Judge

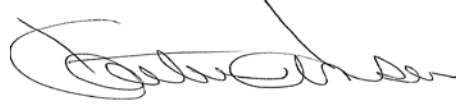
Mark T. Boonstra

Anica Letica
Judges

The Court orders that, in accordance with the Michigan Supreme Court's May 20, 2020 order in this case, *People v Nino*, ___ Mich ___, 943 NW2d 97 (2020), and after consideration of this Court's October 5, 2020 order in *People v Haywood* (Docket No. 345243) and defendant-appellee's motion filed on October 8, 2020, we GRANT defendant's motion to the extent that we VACATE our November 21, 2019 opinion and REINSTATE the prosecutor's appeal to this Court. Proceeding with the present appeal without a proper resolution of this Court's July 10, 2018 order remanding this case to the trial court for a determination of defendant's eligibility for appointed counsel was contrary to the right of an indigent defendant to the assistance of counsel in defending against a preconviction appeal by the prosecution. See *People v Murphy*, 477 Mich 1019; 726 NW2d 722 (2007); MCR 6.005(H)(3). We note that, contrary to the indication of defendant's motion, this is actually a second-tier appeal from a circuit court order entered on appeal from a district court. But we see no relevant distinction in that regard as to defendant's entitlement, if indigent, to the assistance of appointed counsel in defending against this preconviction appeal by the prosecution.

This case is REMANDED to the Wayne Circuit Court for a determination of defendant's eligibility for appointment of appellate counsel and for appointment of such counsel if he is indigent. The trial court shall determine whether to appoint counsel for defendant within 14 days after the date of this order. The trial court shall send a copy of the order deciding this issue and naming appointed counsel, if any, to the Clerk of this Court within seven days after the decision. If counsel is appointed, counsel shall file an appellee's brief on behalf of defendant in this appeal. The time for filing appellee's brief shall run under MCR 7.212(A)(2)(a)(ii) from entry of the order appointing counsel.

This Court retains jurisdiction. This order has immediate effect. MCR 7.215(F)(2).



Presiding Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

October 28, 2020

Date


Chief Clerk